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DANA RUTH LIXENBERG
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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14

15 DANA RUTH LIXENBERG, an
Individual,

16 Plaintiff,

17 v.
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19 AMERICAN RAG CIE II, a California
20 Company; and DOES 1-10,

21 Defendants.
22

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. COPYRIGHT INFRINGEMENT;
2. VICARIOUS AND/OR
CONTRIBUTORY COPYRIGHT
INFRINGEMENT

Jury Trial Demanded

23 Plaintiff, DANA RUTH LIXENBERG, by and through her undersigned
24 attorneys, hereby prays to this honorable Court for relief based on the following:
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1 infringement of Plaintiff's copyrights, or have engaged in one or more of the
2 wrongful practices alleged herein. The true names, whether corporate, individual or
3 otherwise, of Defendants 1 through 10, inclusive, are presently unknown to Plaintiff,
4 which therefore sue said Defendants by such fictitious names, and will seek leave to
5 amend this Complaint to show their true names and capacities when same have been
6 ascertained.

7 7. Plaintiff is informed and believes and thereon alleges that at all times
8 relevant hereto each of the Defendants was the agent, affiliate, officer, director,
9 manager, principal, alter-ego, and/or employee of the remaining Defendants and was
10 at all times acting within the scope of such agency, affiliation, alter-ego relationship
11 and/or employment; and actively participated in or subsequently ratified and adopted,
12 or both, each and all of the acts or conduct alleged, with full knowledge of all the
13 facts and circumstances, including, but not limited to, full knowledge of each and
14 every violation of Plaintiff's rights and the damages to Plaintiff proximately caused
15 thereby.

16 **CLAIMS RELATED TO SUBJECT PHOTOGRAPH**

17 8. LIXENBERG created and owns the Subject Photograph set forth in the
18 table below.

19 9. The Subject Photograph has been registered with the United States
20 Copyright Office.

21 10. Plaintiff is informed and believes and thereon alleges that Defendants
22 accessed the Subject Photograph and then exploited them without the authorization of
23 Plaintiff. Defendants, and each of them, exploited the Subject Photograph by
24 incorporating same into various products, including without limitation, apparel
25 (collectively the "Accused Product"). A non-inclusive exemplar of the Accused
26 Product is set forth below alongside that of the Subject Photograph that is unlawfully
27 incorporated in the respective Accused Product. This exemplar is not meant to
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encompass all Accused Product; the claims made herein are as to any product licensed, distributed and/or sold by Defendants, and/or each of them, that incorporate without permission, in whole or in part, the Subject Photograph.

Subject Photograph	Accused Product
	

11. A comparison of the Subject Photograph with the images on the Accused Product reveals that the elements, composition, colors, arrangement, subject, lighting, angle, and overall appearance of the images are identical or at least substantially similar.

12. On information and belief, Plaintiff alleges that AMERICAN RAG was involved in licensing and/or developing the Accused Product, and/or supplying,

1 distributing, selling, and otherwise providing the Accused Product to third parties,
2 including without limitation, the public.

3 13. LIXENBERG at no point authorized Defendants, or any of them, to use
4 the Subject Photograph as complained of herein.

5 14. A cease and desist demand was made to AMERICAN RAG as early as
6 August 28, 2015.

7 **FIRST CLAIM FOR RELIEF**

8 (For Copyright Infringement – Against all Defendants, and Each)

9 15. LIXENBERG repeats, re-alleges, and incorporates herein by reference as
10 though fully set forth, the allegations contained in the preceding paragraphs of this
11 Complaint.

12 16. LIXENBERG is informed and believes and thereon alleges that
13 Defendants, and each of them, had access to the Subject Photograph, including,
14 without limitation, through viewing the Subject Photograph in or on LIXENBERG's
15 publications, profiles, exhibitions, websites and/or through other authorized channels,
16 over the internet, including without limitation as accessed via a search engine, or
17 through a third-party source.

18 17. LIXENBERG is further informed and believes and thereon alleges that
19 certain Defendants have an ongoing business relationship with one or more of the
20 other Defendants, and that those defendants transacted in order to traffic in the
21 Accused Product.

22 18. Plaintiff is informed and believes and thereon alleges that, without
23 Plaintiff's authorization, Defendants, and each of them, distributed, marketed and
24 sold product bearing images that are identical to, or substantially similar to, the
25 Subject Photograph.

26 19. LIXENBERG is informed and believes and thereon alleges that
27 Defendants, and each of them, infringed LIXENBERG's copyrights by licensing the
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1 Subject Photograph and/or creating an infringing work from the Subject Photograph
2 and then distributing and selling the Accused Product to the public.

3 20. Defendants, and each of them, infringed LIXENBERG's rights by
4 copying the Subject Photograph, and distributing the Accused Product, without
5 LIXENBERG's authorization or consent.

6 21. Due to Defendants', and each of their, acts of infringement,
7 LIXENBERG has suffered actual, general and special damages in an amount to be
8 established at trial.

9 22. Due to Defendants' acts of copyright infringement as alleged herein,
10 Defendants, and each of them, have obtained direct and indirect profits they would
11 not otherwise have realized but for their infringement of LIXENBERG's rights in the
12 Subject Photograph. As such, LIXENBERG is entitled to disgorgement of
13 Defendants' profits directly and indirectly attributable to Defendants' infringement of
14 his rights in the Subject Photograph in an amount to be established at trial.

15 23. LIXENBERG is informed and believes and thereon alleges that
16 Defendants, and each of their, conduct as alleged herein was willful, reckless, and/or
17 with knowledge, subjecting Defendants, and each of them, to enhanced statutory
18 damages, claims for costs and attorneys' fees, and/or a preclusion from deducting
19 certain costs when calculating disgorgeable profits.

20 **SECOND CLAIM FOR RELIEF**

21 (For Vicarious and/or Contributory Copyright Infringement – Against all Defendants,
22 and Each)

23 24. LIXENBERG repeats, re-alleges, and incorporates herein by reference as
24 though fully set forth, the allegations contained in the preceding paragraphs of this
25 Complaint.

26 25. LIXENBERG is informed and believes and thereon alleges that
27 Defendants knowingly induced, participated in, aided and abetted in and profited
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1 from the illegal reproduction and distribution of the Subject Photograph as alleged
2 hereinabove. Specifically, the retailer Defendant transacted with the wholesaler
3 Defendant, and the wholesaler Defendant transacted with its suppliers, in a concerted
4 effort to create, distribute, and sell the Accused Product. And, Defendants, and each
5 of them, realized profits through their respective obtainment, sales and distribution of
6 the Accused Product.

7 26. LIXENBERG is informed and believes and thereon alleges that
8 Defendants, and each of them, are vicariously liable for the infringement alleged
9 herein because they had the right and ability to supervise the infringing conduct and
10 because they had a direct financial interest in the infringing conduct. Specifically,
11 each Defendant in the supply chain had the ability to oversee the development and
12 distribution of the product as engaged in by the party from which it obtained the
13 Accused Product, or component thereof. And, Defendants, and each of them, realized
14 profits through their respective obtainment, sales and distribution of the Accused
15 Product.

16 27. By reason of Defendants', and each of their, acts of contributory and
17 vicarious infringement as alleged above, LIXENBERG has suffered and will continue
18 to suffer substantial damages to her business in an amount to be established at trial, as
19 well as additional actual, general and special damages in an amount to be established
20 at trial.

21 28. Due to Defendants' acts of copyright infringement as alleged herein,
22 Defendants, and each of them, have obtained direct and indirect profits they would
23 not otherwise have realized but for their infringement of LIXENBERG's rights in the
24 Subject Photograph. As such, LIXENBERG is entitled to disgorgement of
25 Defendants' profits directly and indirectly attributable to Defendants' infringement of
26 his rights in the Subject Photograph, in an amount to be established at trial.

29. LIXENBERG is informed and believes and thereon alleges that Defendants, and each of their, conduct as alleged herein was willful, reckless, and/or with knowledge, subjecting Defendants, and each of them, to enhanced statutory damages, claims for costs and attorneys' fees, and/or a preclusion from deducting certain costs when calculating disgorgeable profits.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment as follows:

Against All Defendants

With Respect to Each Claim for Relief

- a. That Defendants, their affiliates, agents, and employees be enjoined from infringing Plaintiff's copyrights in and to the Subject Photograph.
- b. That Plaintiff be awarded all profits of Defendants, and each, plus all losses of Plaintiff, plus any other monetary advantage gained by the Defendants through their infringement, the exact sum to be proven at the time of trial, or, if elected before final judgment, statutory damages to the extent they are available under the Copyright Act, 17 U.S.C. §§ 101, 505, *et seq.*;
- c. That Plaintiff be awarded its costs and attorneys' fees to the extent they are available under the Copyright Act U.S.C. §§ 101, 505, *et seq.*;
- d. That a trust be entered over all Accused Products, and all profits realized through the sales and distribution of said product;
- e. That Defendants, and each of them, be enjoined from any further use of the photography at issue and/or the distribution of any production incorporating same.
- f. That Plaintiff be awarded pre-judgment interest as allowed by law;
- g. That Plaintiff be awarded the costs of this action; and

1 h. That Plaintiff be awarded such further legal and equitable relief as the
2 Court deems proper.

3 A TRIAL BY JURY PURSUANT TO FED. R. CIV. P. 38 AND
4 CONSTITUTIONAL AMENDMENT SEVEN IS HEREBY DEMANDED.

5 Respectfully submitted,

6
7 Dated: July 21, 2017

By:

/s/ Scott Alan Burroughs

8 Scott Alan Burroughs, Esq.

9 DONIGER / BURROUGHS

Attorneys for Plaintiff

10 DANA RUTH LIXENBERG
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